UNITED STATES DISTRICT COURT EASTERN DISTRICT OF TENNESSEE at GREENEVILLE

EMILIO BELTRAN-SANCHEZ,		
Petitioner,)	
v.)	Nos.: 2:14-cv-199; 2:12-cr-40(1)
UNITED STATES OF AMERICA,)	Greer/ Inman
Respondent.)	

MEMORANDUM OPINION

Federal inmate Emilio Beltran-Sanchez ("petitioner") brings this *pro se* motion to vacate, set aside, or correct a sentence under 28 U.S.C. § 2255, (Doc. 17). Following his guilty plea, petitioner was convicted of one count of illegal presence by an alien in the United States, in violation of 8 U.S.C. § 1325(a). His judgment of conviction, fixing a 5-month (time served) sentence of imprisonment and a one-year term of supervised release, was entered on July 23, 2012, (Doc. 11).

On the same day as he filed this instant § 2255 motion, petitioner submitted a notice of appeal, (Doc. 16). The appeal is pending in the Sixth Circuit, but the United States has filed a motion to dismiss it based on an untimely filed notice of appeal, (Sixth Circuit Court of Appeals, *see* online at https://ecf.ca6.uscourts.gov/cmecf/servlet/ TransportRoom?servlet=CaseSummary.jsp&caseNum=14-5791&incOrigDkt=Y&incDkt Entries=Y (Internet materials as visited Oct. 10, 2014, and available in Clerk of Court's

¹ All citations to the record refer to petitioner's criminal file.

case file.)). Even so, it remains that petitioner's appeal is still pending in the Sixth

Circuit.

A defendant who has a direct appeal pending may not maintain a 28 U.S.C. § 2255

action, absent extraordinary circumstances. Capaldi v. Pontesso, 135 F.3d 1122, 1123

(6th Cir.1998) (adopting the rule that, in the absence of extraordinary circumstances, a

district court is precluded from considering a § 2255 application during the pendency of a

direct appeal).

Petitioner has presented no extraordinary circumstances that would cause the

Court to entertain this motion. Accordingly, petitioner's 28 U.S.C. § 2255 action will be

DISMISSED without prejudice by separate order.

The Court **FINDS**, in view of the basis for the dismissal, that petitioner has failed

to make a substantial showing of the denial of a constitutional right because jurists of

reason would not debate the correctness of the procedural ruling disposing of this motion.

Slack v. McDaniel, 529 U.S. 473, 484 (2000). Thus, petitioner is **DENIED** issuance of a

certificate of appealability. Fed. R. App. P. 22(b).

ENTER:

s/J. RONNIE GREER

UNITED STATES DISTRICT JUDGE

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